

REMARKS

Applicant has carefully reviewed the Advisory Action mailed April 11, 2008 and the Final Office Action mailed January 24, 2008 and offers the following remarks.

Claims 1-10, 12-21, 23, 25-28, 30, and 32-35 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,237,260 B2 to Yu et al. (hereinafter “Yu”). The Advisory Action mailed April 11, 2008 only addressed Applicant’s arguments that Yu is not prior art under 35 U.S.C. § 102(e) because Yu was not filed before Applicant’s date of invention (See Response filed March 19, 2008, pp. 2-3; see also Response filed November 13, 2007, pp. 2-5 and accompanying Declarations under 37 C.F.R. § 1.131). Applicant maintains these arguments for the reasons previously set forth.

However, in the Response filed March 19, 2008, Applicant also argued that even if Yu can be considered prior art under 35 U.S.C. § 102(e), a point Applicant does not concede, Yu does not anticipate the claimed invention as Yu does not teach each and every element of the claimed invention (Response filed March 19, 2008, pp. 3-4). In particular, Applicant argues that Yu does not teach each and every element of claim 1 in which a first tunneling session is established via a first access network and a second tunneling session is established over a second access network because Yu discloses a method for establishing communication in a single network having two network peers and does not disclose establishing two tunneling sessions over two different access networks, as recited in the claims of the present invention (See Response filed March 19, 2008, p. 4). The Patent Office did not address these arguments in the Advisory Action mailed April 11, 2008. Accordingly, the Advisory Action is improper for failing to address all of the arguments made by Applicant in its Response filed March 19, 2008.

Applicant’s representative, Rick Witcher, contacted Examiner Sall on April 21, 2008, and pointed out that the Advisory Action did not address all of Applicant’s arguments in the Response filed March 19, 2008. Examiner Sall agreed that the Advisory Action did not address the arguments on pages 3 and 4 of the Response filed March 19, 2008 concerning Yu not teaching each and every element of the claimed invention and indicated that it was possible he had overlooked those arguments. Because the Advisory Action has already issued, Examiner Sall suggested that Applicant file a response pointing out that the arguments were not addressed in the Advisory Action so that the application would be returned to Examiner Sall’s docket and Examiner Sall could consider the previously made arguments and address them as necessary.

Applicant therefore files the present Response in order that Applicant's previously made arguments be addressed for the first time. Applicant requests that the arguments previously submitted in the Response filed March 19, 2008, and particularly the arguments on pages 3 and 4 concerning Yu not teaching each and every element of the claimed invention, be considered and addressed by the Examiner. In particular, Applicant requests that should the Examiner maintain the rejection, that the Examiner point out specifically where in Yu two tunneling sessions are established via two different access networks. Applicant maintains that Yu does not teach establishing two tunneling sessions via two different access networks and thus does not anticipate the claimed invention.

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,
WITHROW & TERRANOVA, P.L.L.C.

By:



John R. Witcher, III
Registration No. 39,877
100 Regency Forest Drive, Suite 160
Cary, NC 27518
Telephone: (919) 238-2300

Date: April 22, 2008

Attorney Docket: 7000-265